IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

OP.No. 3450 of 2000(I)

PETITIONER:

THE PRESIDENT, MOOLATHARA
KSHEEROLPADAKA SAHAKARANA SANGHAM,
MEENAKSHIPURAM P.O.,
PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH

RESPONDENTS:
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1. **THE LABOUR COURT, KOZHIKODE.**

2. **THE KERALA CO-OPERATIVE EMPLOYEES FRONT,**
REP.BY ITS SECRETARY, MR.V.RAMAKRISHNAN,
MUNDUR P.O., PALAKKAD.

BY ADV. SRI.P.V.BABY
SRI.T.C.SURESH MENON
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.3450/2000

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD IN ID. NO.48/90 DT. 6.1.93.

EXT.P2:- COPY OF THE JUDGMENT IN OP. NO.12326/93 DT. 21.11.97.

EXT.P3:- COPY OF THE JUDGMENT IN WA. NO.271/98 DT. 10.9.99.

EXT.P4:- COPY OF THE REVISED AWARD IN ID. NO.48/90 DT. 30.6.98.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN,J

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O.P.No.3450 of 2000

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Dated this the 28th day of November, 2007

JUDGMENT

The management in I.D.No.48/90 before the Labour Court, Kozhikkode, is the petitioner herein. They are challenging Exts.P1 and P4 awards passed by the Labour Court in that I.D. The issue referred for adjudication was denial of employment of 22 workers by the petitioner society. The contention of the petitioner-management before the Labour Court was that there was partial closure of the establishment, consequent to which only the workmen were retrenched and therefore they are not entitled to any relief in the I.D. The Labour Court found that there was no closure but only retrenchment, which was effected without complying with the procedure and formalities prescribed in the Industrial Disputes Act. On that finding, by Ext.P1 award, the Labour Court directed reinstatement of the 22 workers involved in the I.D., with full back wages and continuity of service. The petitioner management challenged Ext.P1 award by filing O.P.No.12326/1993. By Ext.P2 judgment, a learned Single Judge of this Court confirmed the findings of the Labour Court

that it was a case of retrenchment and the same was effected without complying with the procedure prescribed. However, the learned Single Judge disagreed with the relief of reinstatement granted and holding that in every case of illegal retrenchment, reinstatement is not automatic remanded the matter to the Labour Court for reconsideration of the relief to be granted to the workmen. The petitioner-management challenged that judgment in W.A.No.271/1998. By the time writ appeal came up for hearing the Labour Court had already passed Ext.P4 revised award after remand as per the judgment of the learned Single Judge. By Ext.P4 award the workmen were directed to be paid retrenchment compensation as computed therein, instead of reinstatement. Therefore, the Division Bench dismissed the appeal reserving liberty to the management to challenge the revised award of the Labour Court on the remarks raised in the appeal memorandum and other grounds to be raised in future. It is in the above circumstances the petitioner is challenging both Exts.P1 and P4 award.

2. The counsel for the petitioner management reiterated his contentions taken before the Labour Court that there was no

retrenchment but only partial closure of the establishment. The management is a Milk Society. The business consisted of collecting milk from member producers and selling the same. Formerly the practice adopted by the society was to collect the milk from the houses of the members of the society by employing milk collectors who would collect milk from the houses of the members and bring it to the society. The society decided to stop this practice of collecting milk from the houses of the members. Instead the members were directed to bring milk to the society directly. On account of this change of practice there was no necessity to employ milk collectors for collecting milk from the houses of the members of the society and as a result their services were terminated. According to the management this amounts to closure of that part of the business of the society whereby process of collection of milk from the houses of the members of the society was closed. According to the petitioner-management, this amounts to partial closure of the business of the management and not illegal retrenchment as claimed by the workmen.

3. This is contested by the counsel for the 2nd

respondent who would argue that his is a pure case of retrenchment and no closure of any sort is involved. I am of the opinion that now that the relief of reinstatement with back wages and continuity of service has been changed to payment of retrenchment compensation, by Ext.P4 award, the question raised by the petitioner-management is purely academic since whether it is closure or retrenchment the compensation payable is the same and the management is bound to pay compensation in the case of closure also at the same rate applicable to retrenchment. In any event, since the stopping of the practice of collection of milk from the houses of the members of the society can certainly be regarded as retrenchment of surplus workmen, the effect which may also be regarded as partial closure of the business that cannot justify interfere in the award by this Court. It is settled law that if two views are possible this Court cannot interfere with the view taken by the Labour Court and substitute to the same for the other. The fact that a learned single judge has, in Ext.P2 judgment, taken such a view would amply show that such a view is possible. In any event, I do not find any perversity in the findings of the Labour Court on the

question.

4. The learned counsel for the petitioner raises another contention relating to the sustainability of the computation of compensation. He would submit that the Labour Court has merely accepted the dates of entry into service given by the workmen involved which was disputed for the management without any evidence. The workmen did not produce any material to prove their dates of entry into service is the contention raised. Therefore, findings on the question of date of entry into service is unsustainable submits the counsel for the petitioner. I do not think that such contention can be countenanced. The findings in this regard by the Labour Court is as follows:

> " The date of entry in service of the workers as shown in the statement of union is disputed by the management. Management showed different dates in their statement. The documents to prove the correct date of entry of service of the workers must be with the management. As the management did not produced any document to prove the same. I am inclined to accept the date of entry in service of workers as shown in the claim statement of union as correct."

The management must certainly be in possession of documents to prove the date of entry into service of the workmen. If when they did not produce those documents which

are in their possession they have withheld the best evidence available from the Labour Court. That being so, I do not find any perversity in the above findings of the Labour Court. In the above circumstances, I am not inclined to interfere with the amounts of compensation assessed by the Labour Court also. Therefore, there is no merit in the writ petition and accordingly the writ petition is dismissed.

S.SIRI JAGAN, JUDGE

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